

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HEATHER DELHAGEN,	:	CIVIL ACTION - LAW
	:	
Plaintiff,	:	
	:	CHIEF JUDGE YVETTE KANE
v.	:	
	:	
KEN McDOWELL, in his	:	
individual and official	:	
capacity,	:	
	:	
Defendant.	:	NO. 3:08-CV-285

**DEFENDANT'S BRIEF IN SUPPORT OF HIS MOTION TO QUASH THE
SUBPOENA TO ATTEND AND TESTIFY ISSUED UPON STEVEN
BARCOSKI BY PLAINTIFF**

Defendant Ken McDowell ("Mr. McDowell"), by and through his undersigned counsel, respectfully submits this brief in support of his motion to quash (the "Motion").

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 19, 2011, Plaintiff Heather Delhagen ("Plaintiff") subpoenaed Lackawanna County's (the "County") Director of Revenue and Finance, Steven Barcoski ("Mr. Barcoski"), to attend and testify at the trial to be conducted in this matter. See Motion at ¶ 1. Mr. Barcoski has no relevant information relating

to this matter. See Motion at ¶¶ 2. Moreover, Mr. Barcoski is not one of the witnesses listed in Plaintiff's pretrial memorandum. See Motion at ¶ 3.¹

II. LAW AND ARGUMENT

A federal court has the authority to quash a subpoena that seeks material which is clearly irrelevant. Gateway Eng'rs, Inc. v. Edward T. Sitarik Contr., Inc., No. 09-mc-209, 2009 U.S. Dist. LEXIS 94351, **7-8 (W.D. Pa. 2009) citing 9A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure: Civil 2d § 2459, at 42 (1995). Nothing in the evidentiary record of this matter indicates that Mr. Barcoski has anything other than irrelevant information to offer at trial. He has no first hand

¹ While not dispositive for purposes of this motion, Plaintiff's cover letter to Mr. Barcoski indicates that "if you, for some reason, are not called to testify, please destroy the check." See Exhibit "A". Such direction is contrary to Rule 45(b)(1) of the Federal Rules of Civil Procedure which require payment of a witness fee for attending irrespective of whether or not a witness is actually called to testify. Fed.R.Civ.P. 45(b)(1). Accordingly, Plaintiff must be directed to correct this statement for all witnesses she has subpoenaed.

information relating to this matter, he doesn't and didn't work for the Controller's office and there is no reason to believe he knows anything of Ms. Delhagen's action in any capacity. See Motion at ¶ 2. Accordingly, he cannot be permitted to testify. See Gateway Eng'rs, 2009 U.S. Dist. LEXIS 94351 at **7-8.

Additionally, pursuant to Local Rule 16.6, each party is required to submit a list of those witnesses they will be presenting at trial as part of their pretrial memorandum. See LR 16.6. Plaintiff's pretrial memorandum makes no reference to Mr. Barcoski. See Doc. 50, p. 2. Accordingly, Plaintiff cannot now put forward Mr. Barcoski to offer testimony as he is previously undisclosed and permitting him to appear would unfairly prejudice the Defendant. See Fed.R.Civ.P. 26; see also LR 16.6

III. CONCLUSION

For any or all of the foregoing reasons, Plaintiff's subpoena to attend and testify directed to Steven Barcoski must be quashed.

Respectfully submitted,

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DATED: July 6, 2011

CERTIFICATE OF SERVICE

I, JOEL M. WOLFF, hereby verify that I have caused to be served this day a true and correct copy of Defendant Ken McDowell's brief in support of his motion to quash on all counsel of record via electronic case filing and United States First Class Mail addressed as follows:

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DATED: July 6, 2011